IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-11-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE J.A.K. SAMPATH KUMAR

H.C.P.NO.796 OF 2006

Mrs.Kousalya, aged 26 years,
Wife of Kutty @ Kutty Bhaskar .. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Prohibition & Excise Department,
Fort St. George, Chennai 9.

2. The Commissioner of Police,
Greater Chennai, Chennai 8. .. Respondents

Habeas Corpus Petition has been filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the entire records leading to the detention of the petitioner's husband, namely, Kutty @ Kutty Bhaskar detained under Act 14/82 vide detention order dated 29.7.2006, on the file of the 2nd respondent herein made in S.C.No.201/2006, quash the same and consequently direct the respondents to produce the body and person of the said detenue before this Court and thereafter set him at liberty from Central Prison, Chennai.

For Petitioner : Mrs.R. Subadra Devi

For Respondents : Mr.Babu Muthu Meeran,
Addl. Public Prosecutor

J U D G M E N T

This Habeas Corpus Petition has been filed by the wife of the detenu challenging the order of preventive detention of the detenu dated 29.7.2006. The detention is on the ground that the detenu is a Goonda within the meaning of the Tamil Nadu Prevention and Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2. Learned counsel appearing for the petitioner has raised the following contentions :-

(1) The petitioner had sent a representation dated 14.8.2006 and such representation has not been disposed of expeditiously and moreover the result of the representation has not been made known to the detenu.

(2) The occurrence relating to ground case is alleged to have been taken place at 8.30 am. on 9.7.2006 and the FIR was registered at 10.00 am. However, in the report relating to Observation Mahazar, which took place at 9.30 a.m, Crime Number has been indicated and, therefore, the detaining authority has not applied his mind to this discrepancy.

(3) Intimation relating to the date of holding of the Advisory Board "... was not served on the detenu in advance and thus he could not muster the assistance of his friend/relative during personal hearing. On this ground of denial of reasonable opportunity the impugned order of detention is vitiated".

3. A counter affidavit has been filed by the second respondent, namely, the detaining authority. However, no counter affidavit appears to have been filed by the State of Tamil Nadu, the first respondent.

4. So far as the first question relating to alleged delay in disposal of the representation is concerned, the Additional Public Prosecutor has produced before us a chart showing the progress in disposal of the representation from time to time. From such particulars, it is apparent that the representation, which was received on 22.8.2006, had been dealt with promptly on 31.8.2006 and subsequently rejection letter was prepared on the very same day and was sent on 1.9.2006. Learned Addl. Public Prosecutor has not produced any material to show that such communication was served on the detenu on 5.9.2006. In the facts and circumstances of the case, we are unable to accept the contention of the petitioner that there has been any delay either in disposal of the representation or even in communication of such disposal. Such contention is therefore liable to be rejected.

5. The second contention of the petitioner is relating to the discrepancy, which is staring on record, relating to an important aspect. It is not disputed that FIR relating to the ground case was registered at 10.00 am. The observation mahazar stated to have been prepared at the spot was at 9.30 am. crime number has been indicated in such observation mahazar, even though crime number could have been assigned only after 10.00 am, when the FIR was registered. The materials on record do not indicate that the detaining authority had applied his mind to such discrepancy, which creates some suspicion regarding the applicability of mind on the part of the detaining authority to the relevant materials.

6. The question now raised by the petitioner seems to be covered by a Division Bench decision of this Court reported in (2006) 2 M.L.J.

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(Crl.)316 (JOTHI v. SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, CHENNAI AND ANOTHER). In the said case, even though the FIR was registered at 1.00 pm., the accused was arrested and confessional statement was obtained at 11.00 am. and in such confessional statement crime number has been particularly referred to, which created a doubt in the minds of the Court. Considering the aforesaid discrepancy, the Division Bench observed that the order of detention was vitiated. Reliance placed upon by the Additional Public Prosecutor on the two unreported decisions in HCP.No.11 of 2003 dated 14.10.2003 and HCP.No.151 of 2003 dated 30.10.2003 was found unacceptable.

In view of the aforesaid, the order of preventive detention in the present case is also liable to be quashed.

7. Apart from the above, the other contention raised by the petitioner that sufficient opportunity was not given to the detenu to be represented through a friend or relative before the Advisory Board is also worthy of acceptance. A specific ground is raised by the petitioner in paragraph (e) of the affidavit and the relevant portion of such contention has been extracted earlier. As already indicated, no counter has been filed by the State Government. However, Respondent No.2, the detaining authority, in the counter averred as follows :-

> "10. Regarding the contention in Grounds-e of the affidavit, it is submitted that this respondent adopt the submissions of the first respondent with regard to the service of intimation regarding personal hearing of the detenu by the Advisory Board since the same was attended by the first respondent office."

8. It is thus apparent that in the counter affidavit filed by the second respondent there is no denial regarding the assertion that the intimation has not been served sufficiently ahead of the date fixed for meeting of the Advisory Board. On the other hand, the second respondent in paragraph 10 of the counter has simply stated that submissions of the first respondent with regard to the service of intimating regarding personal hearing of the detenu by the Advisory Board "is adopted" by the second respondent. In the absence of any counter affidavit denying the allegations in Ground 'e', the assertion of the detenu has to be accepted. It is therefore clear that the intimation regarding the date of appearance before the Advisory Board had not been given sufficiently ahead of such date fixed and it is obvious that the detenu could not avail the opportunity of being represented either through a relation or a friend before the Advisory Board. It is obvious that a detenu should have been given reasonable opportunity of making submission before the Advisory Board. This can be done by the detenu himself or through a relation or friend which was contemplated in the grounds of detention. Since such opportunity has been rendered meaningless because of belated communication relating to the date of sitting of the Advisory Board, we are constrained to quash the order of detention.

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9. It is no doubt true that some of the allegations against the detenu are fairly serious. However, since the order of preventive detention involves loss of liberty of a citizen, it is expected of the authority to follow strictly the procedural safeguards contemplated either under Article 22 of the Constitution or under the relevant statute and the infraction of such procedural safeguards would inevitably result in quashing such orders of preventive detention. The persons vested with onerous task of passing orders of preventive detention are required to act with diligence and when such orders of detention are challenged in the court of law, the authorities are expected to file proper reply explaining the position. In the present case, as already observed, even though a specific ground has been raised by the petitioner, no counter affidavit has been filed on that aspect either by the State Government or by the second respondent. On the other hand, the second respondent has merely stated that the submissions made by the first respondent is adopted by the second respondent which again indicates the cavalier fashion in which such counter affidavits are drafted and signed. It is hoped and expected that the authorities should be much more diligent and careful in dealing with such matters.

10. For the aforesaid reasons, the Habeas Corpus Petition is allowed and the order of detention is set aside and the detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
The State of Tamil Nadu,
Prohibition & Excise Department,
Fort St. George, Chennai - 9.

2. The Commissioner of Police,
Greater Chennai, Chennai - 8.

3. The Public Prosecutor,
High Court, Madras

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4. The Superintendent,
Central Prison, Chennai.

5. The Joint Secretary to Government,
Public (Law and order)
Fort St. George,
Chennai-9.

+ 1 cc to M/S.R.Subadradevi, Advocate SR No.57501

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CGS(21/12/2006)

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